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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,167	10/25/2001	James M. Tibbitt	37,270	3418
4249	7590	06/30/2004	EXAMINER	
CAROL WILSON BP AMERICA INC. MAIL CODE 5 EAST 4101 WINFIELD ROAD WARRENVILLE, IL 60555			CHEN, VIVIAN	
			ART UNIT	PAPER NUMBER
			1773	

DATE MAILED: 06/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/028,167

Applicant(s)

TIBBITT ET AL.

Examiner

Vivian Chen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 and 17-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-12, 13/11, 17-20, 31-32, 33/31, 37-38, 40 is/are allowed.
- 6) ☒ Claim(s) 1-3, 10, 13/1, 14-15, 21-23, 30, 33/21, 34-36, 39 is/are rejected.
- 7) ☒ Claim(s) 4-9, 24-29 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3-2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

1. Claim 16 has been cancelled.

***Claim Rejections - 35 USC § 103***

2. Claims 1-3, 10, 13/11, 14-15, 21-23, 30, 33/31, 34-36, 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over SCHMIDT ET AL (US 5,952,066).

SCHMIDT ET AL discloses a transparent oxygen scavenging composition for forming single-layer packaging materials for oxygen sensitive materials and suitable for direct food contact, wherein the composition comprises 0.1-10 wt% of an oxygen-scavenging copolymer and 90-99.9 wt% polyester such as PET (Figure 9; lines 39-50, col. 3; lines 7-65, col. 11).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the compositions disclosed in SCHMIDT ET AL in single layer packaging materials in order to simplify manufacture and recycling. One of ordinary skill in the art would have selected the type and relative amounts of the bulk polymeric component, oxygen-scavenging copolymer and additives to obtain the specific transparency and optical properties (claim 1) desired for a specific application. Furthermore, since the packaging materials are disclosed as being substantially transparent, the Examiner had reason to believe that the prior art films are capable having haze values of 8% or less (claims 1, 36, 39), therefore the Examiner has basis for shifting the burden of proof to applicant as in *In re Fitzgerald et al.*, 205 USPQ 594. It would have been obvious to apply additional functional coatings (claim 14, 34) to the single-layer packaging in order to obtain specific visual, informational, or aesthetic effects, and/or

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improve printability. Since the disclosed material composition ~~may~~ contain a high percentage of polyester with relatively minor amounts of the oxygen-scavenging component, one of ordinary skill in the art would reasonably believe that the disclosed packaging materials is capable of being recycled with other polyester materials (claim 15, 35) and having migration levels as recited in claims 10, 30.

***Response to Arguments***

3. The rejections under 35 USC 103(a) based on the SPEER ET AL references has been withdrawn in view of Applicant's amendments and arguments, and the Kulzick Declaration filed 3/26/2004.

***Allowable Subject Matter***

4. Claims 11-12, 13/11, 17-19, 20, 31-32, 33/31, 37-38, 40 are allowed.

5. Claims 4-9, 24-29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. The following is a statement of reasons for the indication of allowable subject matter:

The prior art of record fails to disclose or suggest a monolayer package comprising an oxygen scavenging composition and having wherein the oxygen-scavenging composition

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comprises: (a) the recited transition metal catalyst (claims 4, 24); (b) the recited copolymer with the specified polycondensate and oxygen-scavenging segments (claims 5, 11, 20, 31, 40).

### *Conclusion*

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vivian Chen whose telephone number is (571) 272-1506. The examiner can normally be reached on Monday through Thursday from 8:30 AM to 6 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau, can be reached on (571) 272-1516. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

The General Information telephone number for Technology Center 1700 is (571) 272-1700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

June 24, 2004



Vivian Chen  
Primary Examiner  
Art Unit 1773